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## Via Federal Express

Fouad Dababneh, Enforcement Specialist U.S. Environmental Protection Agency, Region 5 Superfund Division, Enforcement and Compliance Assurance Branch Enforcement Services Section 2, SE-5J 77 West Jackson Boulevard Chicago, Illinois 60604-3590

Re: I

**Baker Perkins Superfund Site** 

1010 Hess Avenue in Saginaw, Saginaw County, Michigan

Site Spill Identification Number: C51X Saginaw Development LLC's Response to General Notice of Potential Liability

Dear Mr. Dababneh:

I write on behalf of Saginaw Development LLC in response to the U.S. EPA's correspondence dated September 18, 2014, regarding the Baker Perkins Superfund Site ("BP Site") in Saginaw, Michigan. The EPA's correspondence states that the EPA has documented the release or threat of release of hazardous substances into the environment from the BP Site and details the EPA's plan to spend public funds to investigate and control those releases. It further states that the EPA believes that Saginaw Development "may have operated at the BP Site or generated or transported hazardous substances that were disposed of at the BP Site." And it states that the EPA is willing to discuss the potential entry of an administrative consent order. Saginaw Development is open to cooperation and further communication on this matter, but Saginaw Development's responsibility for any response costs is de minimis and its ability to pay is extremely limited in any event.

## I. Saginaw Development's responsibility for response costs is de minimis

Parties other than Saginaw Development are primarily responsible for any response costs. Saginaw County sold the property at 1010 Hess Avenue in Saginaw, Michigan (the "Property") to Saginaw Development for an amount well below market price. Saginaw Development hired an environmental consultant to prepare a Phase I Environmental Site Assessment ("ESA Report") and an Asbestos Building Inspection Report ("Asbestos Report"). After reviewing these reports, Saginaw Development hired A & L Iron and Metal Company

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("A & L"), who was primarily responsible for demolition activities and movement and removal of materials at the Property.

When Saginaw County sold the Property to Saginaw Development, the County was aware that the Property was contaminated. Historical records and extensive testing from multiple sources and owners from the turn of the century show that prior to Saginaw Development's acquisition of the Property, the majority of the BP Site was contaminated with VOCs, PNAs, PCBs, and metals. Records also indicate that the groundwater underneath the BP Site was contaminated. The County was aware of that condition and sold the Property to Saginaw Development for an amount that was below market value with the intent that Saginaw Development would contract for the demolition activities that were undertaken at the Property.

After purchase, Saginaw Development's activities on the Property were limited in duration and scope. Saginaw Development merely contracted for the performance of demolition activities on the Property. Prior to engaging A & L as demolition contractor, Saginaw Development retained an environmental consultant to assess the portions of the Property where the demolition activities would occur. Specifically, as previously documented and submitted to both the EPA and the MDEQ, Saginaw Development consulted Environmental Consulting and Training of Michigan ("ECTM"). ECTM was retained to advise Saginaw Development of all necessary or required inspections for both the EPA and the State of Michigan, and then to perform them.

ECTM conducted an asbestos inspection on October 17, 2011. Kevin Fessler, ECTM's Principal, performed the work. Samples were taken throughout the Property, and ECTM submitted the Asbestos Report to Saginaw Development on October 28, 2011. According to the Asbestos Report, the Property did not contain any asbestos containing materials ("ACMs").

ECTM also prepared the ESA Report on October 28, 2011. Mr. Fessler performed this work as well. According to the ESA Report, all of the asbestos was removed in the mid-1990s. As of the date of the ESA Report, ACMs were no longer listed as a recognized environmental condition.

After reviewing the work performed by ECTM and receiving advice from Mr. Fessler, Saginaw Development entered into an agreement with A & L to perform demolition activities and sell scrap materials in November 2011. Saginaw Development did not perform any development or excavation activities, nor did it perform any operations or production activities. The only activity that was conducted on the Property was demolition, which was carried out primarily by A & L. Contract laborers also performed limited demolition-related activities at the Property. In addition, despite reasonable efforts to prevent trespassing, including fencing and full-time security, trespassers would frequently gain access to the Property and

perform unknown activities, which may have included taking or leaving materials. In short, Saginaw Development's activities at the Property were limited. Its responsibility for any response costs is de minimis.

## II. Saginaw Development's ability to pay is extremely limited

Saginaw Development's financial capacity is negligible compared to its share of liability. It cannot afford to pay for even a de minimis share of any response costs at the BP Site, let alone the entire amount of those costs. Saginaw Development would be amenable to discussing the possibility of negotiating an administrative consent order with the EPA. But given Saginaw Development's inability to pay, any such discussions would need to be focused on efforts to identify potential alternative funding mechanisms.

For example, Saginaw Development has suggested that it might be able to contract with A & L to harvest additional metal that remains on the Property and contribute the proceeds of the sale of the metal to pay for the response activities proposed by the EPA. In fact, Saginaw Development had fully intended to do just that. Those intentions, as well as potential future development concepts for the Property, were summarized in numerous communications with City officials and council members.

Saginaw Development believes that there is approximately \$200,000 in value that could have been harvested from the ferrous metals in the remaining structures on the Property. That money could have been used to contribute to the cost of the response activities proposed by the EPA. But at this point those assets are owned by Saginaw County, not Saginaw Development. They are the only source of funds known to Saginaw Development that could be readily available to pay for response activities at the Property.

\* \* \*

The EPA has stated that it is willing to discuss the potential entry of an administrative consent order, and Saginaw Development is open to participating in such a discussion. That said, Saginaw Development's responsibility for any response costs at the Property is de minimis. And even a de minimis share of the cost to perform the activities outlined by the EPA would exceed Saginaw Development's assets. Any administrative consent order between EPA and Saginaw Development would need to acknowledge that reality.

Further correspondence regarding this matter should be directed to me as counsel for Saginaw Development. Please do not hesitate to contact me if you have any questions. I look forward to working with you to resolve this matter.

Very truly yours,

Scott M. Watson

Cc: Mr. Richard F. Menke Jr.

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